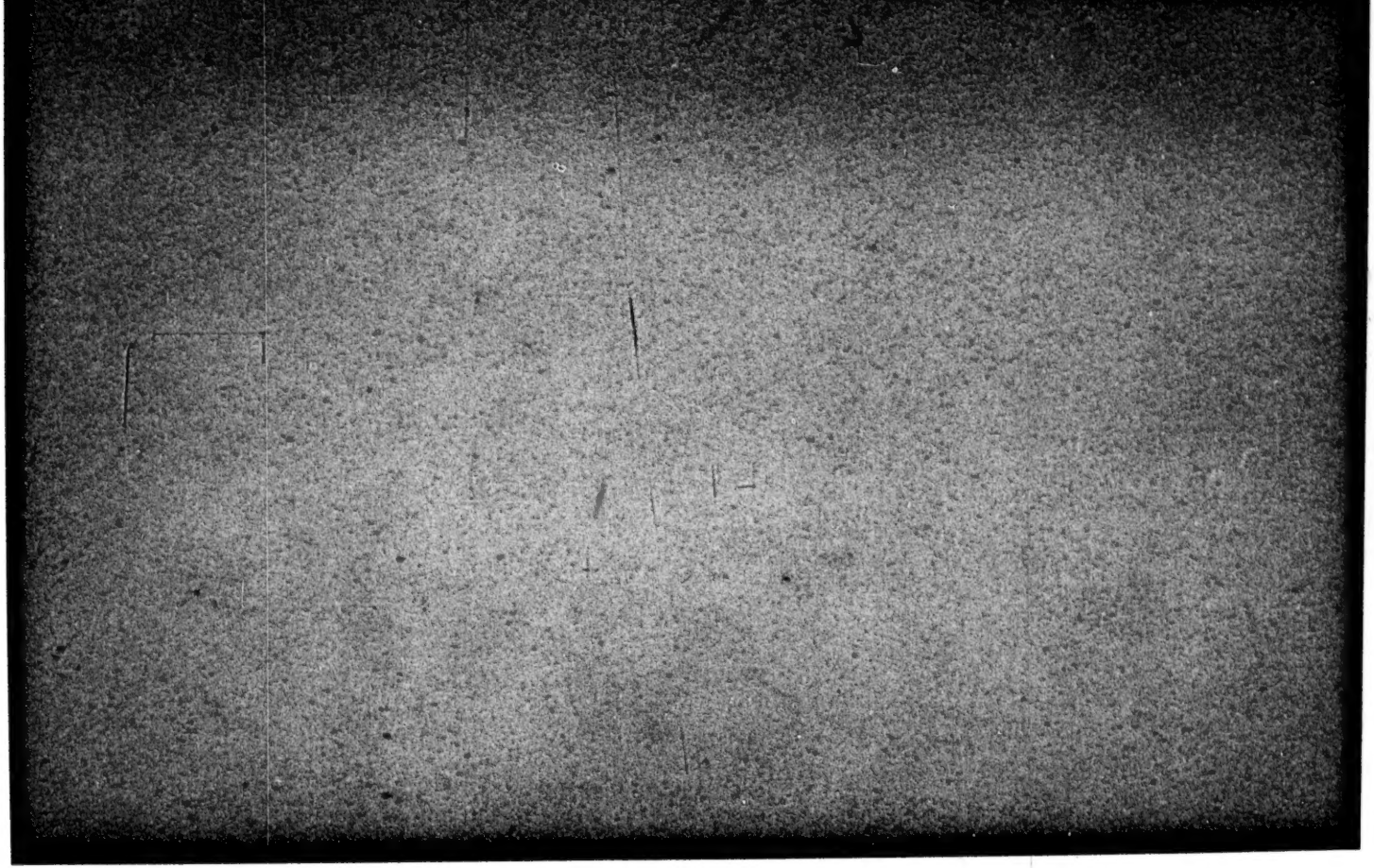

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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1697

STANDARD PRESSED STEEL CO., a foreign corporation,
Appellant,
v.
DEPARTMENT OF REVENUE,
Appellee.

ON APPEAL FROM THE WASHINGTON STATE COURT OF APPEALS, DIVISION II

JURISDICTIONAL STATEMENT

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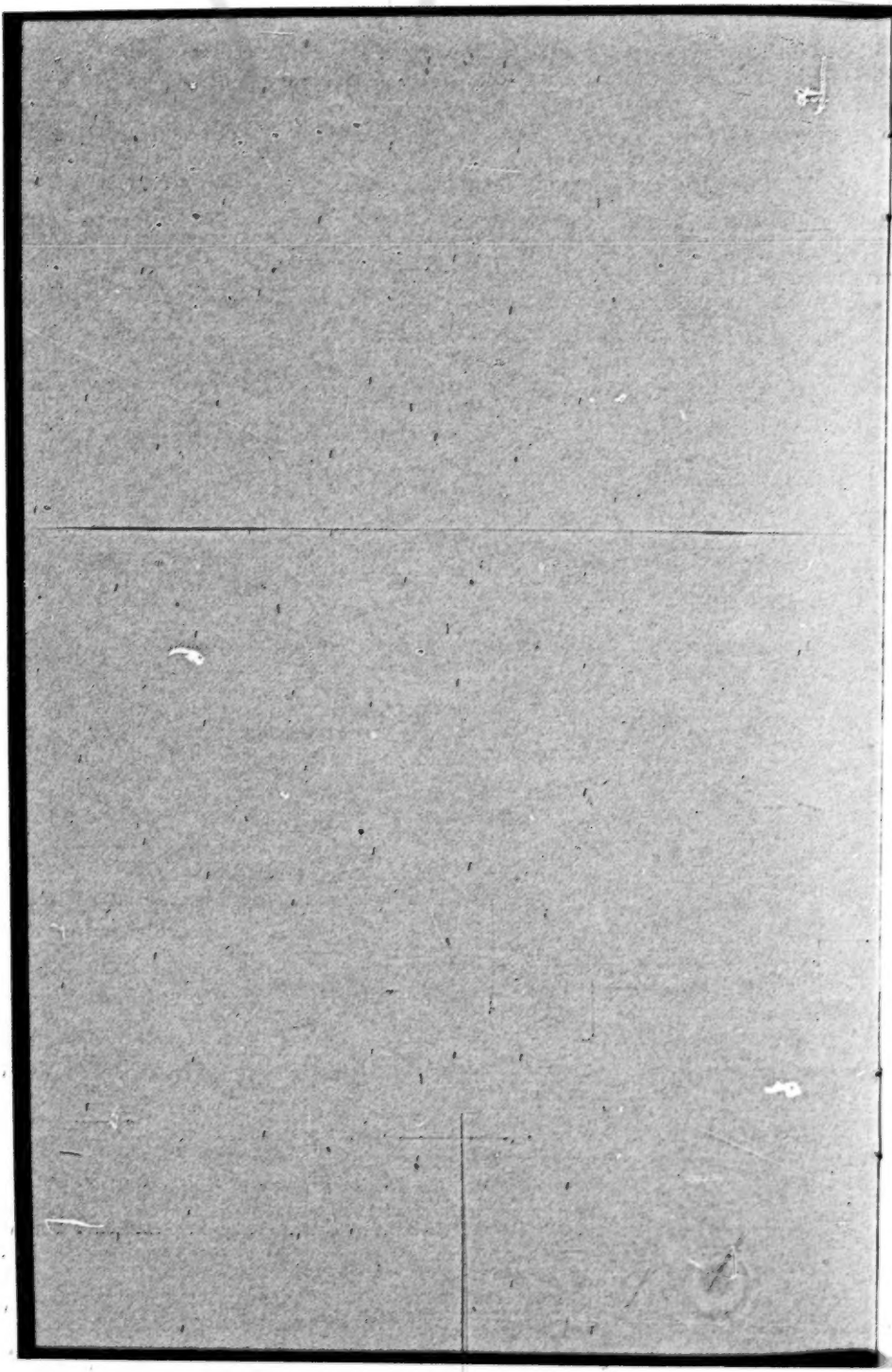

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JURISDICTIONAL STATEMENT

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Standard Pressed Steel Co. appeals from the final judgment of the Court of Appeals of the State of Washington, filed on December 3, 1973, which became final on February 20, 1974, and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal, and that the questions presented are constitutionally substantial and of public importance.

The appellee is the Department of Revenue of the State of Washington.

OPINIONS BELOW

The opinion of the Superior Court of the State of Washington for Thurston County, which reviewed the final decision of the Washington Board of Tax Appeals, is not officially reported. A copy of the opinion is attached hereto as Appendix A. The opinion of the Court of Appeals of the State of Washington is reported at 10 Wn. App. 45, 516 P.2d 1043 (1973) and a copy is attached hereto as Appendix B.

JURISDICTION

Standard Pressed Steel Co., considering itself aggrieved by the Washington State Department of Revenue's determination that it was liable for the Washington Business & Occupation Tax on its wholesale sales to the Boeing Company, appealed from this determination to the Board of Tax Appeals as provided for in the Washington Administrative Procedures Act, Ch. 34.04 of the Revised Code of Washington. The Board of Tax Appeals ruled that appellant was properly subject to the Business & Occupation Tax and upheld the assessment of the Department of Revenue. Appellant being aggrieved by the order and final decision of the Board of Tax Appeals, filed a petition for judicial review in the Superior Court of the State of Washington in Thurston County, pursuant to §34.04.130 of the Revised Code of Washington. The Superior Court affirmed the order and final decision of the Board of Tax Appeals and granted judgment for the Department of Revenue. Appellant then filed its notice of appeal with the Washington Supreme Court who transferred the case to the Washington Court of Appeals, Division II, which is an in-

termediate state appellate court. Oral argument was heard in the Court of Appeals on October 11, 1973, and that court filed its decision of affirmance on December 3, 1973. Appellant thereafter filed a petition for rehearing with that court on December 20, 1973, and the court entered its order denying the petition for rehearing on January 3, 1974, a copy of which order is annexed as Appendix C. Appellant then addressed a petition for review to the Washington Supreme Court, the highest state court in which a decision could be had, and the court, without hearing argument, entered on February 20, 1974, its order denying appellant's petition for review, a copy of which order is annexed as Appendix D.

The Court of Appeals thereafter entered final judgment on February 21, 1974, a copy of which is annexed as Appendix E.

Notice of appeal to this court was filed in the state Court of Appeals, Divsion II, being the court possessed of the record, on March 15, 1974, a copy of which is annexed as Appendix F. The jurisdiction of the Supreme Court to hear this appeal is conferred by 62 Stat. 929, 28 U.S.C. §1257(2). The following cases sustain such jurisdiction: *General Motors Corp. v. Washington*, 377 U.S. 436; *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450; *Field Enterprises, Inc. v. State of Washington*, 353 U.S. 806; *Gwin, White & Prince, Inc. v. Henneford*, 305 U.S. 434.

The parties have stipulated that the total amount of Business & Occupation Taxes and interest subject to refund in the event petitioner is the prevailing party in this appeal is the sum of $33,444.91.

QUESTIONS PRESENTED

1. Is a Washington tax on the privilege of engaging in the business of making sales at wholesale within said state repugnant to the due process clause of the United States Constitution when applied to gross receipts from sales of goods manufactured and sold wholly without the state by a foreign corporation to a customer located within the state, when the seller's sole in-state activity consists of the activities of one resident engineer who makes himself aware of the customer's possible potential needs and passes this information to out-of-state offices, and who offers some engineering assistance to the customer in the use of the product, but who does not take or accept orders, and who is not involved at all with sales negotiations, delivery dates or delivery problems, credit checks, or any other aspect of the sale transaction?

Subsidiary to this question are the following:

a. Is such a tax an unwarranted extension of state power beyond its boundaries, so that traditional notions of fair play and substantial justice are offended?

b. Is the imposition of such a tax, a tax on de minimis activities and mere entry into the state?

2. Is the Washington tax on the privilege of engaging in the business of making sales at wholesale within said state repugnant to the commerce clause of the United States Constitution, when applied to the gross receipts from sales of goods manufactured and sold wholly without the state by a foreign corporation to a customer located within the state, when the seller's sole in-state activity consists of the activities of one resident engineer who makes himself aware of the customer's possible potential needs and pass-

es this information on to out-of-state offices and who offers some engineering assistance to the customer in the use of the product, but who does not take or accept orders, and who is not involved at all with sales negotiations, delivery dates or problems, credit checks, or any other aspect of the sales transaction?

Subsidiary to this question are the following:

a. Does the commerce clause prohibit such a risk if multiple taxation where no sales activity of any kind occurs within the taxing state, where the necessary and material incidents of the sale occur outside of the taxing state?

b. Has the state afforded such a taxpayer sufficient protection and benefits to justify the exaction of the tax in return for said benefits?

STATUTES AND CONSTITUTIONAL PROVISIONS

The tax here involved is imposed by Title 82, Ch. 82.04 of the Revised Code of Washington. Pertinent portions of §82.04.040, §82.04.060, §82.04.070, §82.04.220, §82.04.270, and §82.04.500 are set forth in Appendix G.

Article I, §8,, Clause 3 of the Constitution of the United States (commerce clause) and the due process clause of the 14th Amendment of the Constitution of the United States are set forth in Appendix H.

STATEMENT OF THE CASE

This is an appeal by Standard Pressed Steel Co. from the assessment by the State of Washington of a tax on the privilege of engaging within the State of Washington in the business of making sales at wholesale, measured by the

unapportioned gross receipts from the transactions described as follows:

Standard Pressed Steel Co. is a Delaware corporation with production facilities located in Jenkintown, Pennsylvania, and Santa Ana, California. A significant amount of appellant's business involves the manufacture and sale of fasteners (nuts and bolts, generally) to be used in the aerospace industry, and, therefore, Standard Pressed Steel Co. on occasion supplies fasteners to the Washington facilities of the Boeing Company.

The only employee of Standard Pressed Steel present within the State of Washington over the tax years in question was H. Robert Martinson, an engineer, who performed his activities for appellant out of a portion of one room in his home equipped with a desk, telephone, and a file cabinet.

Martinson's primary function was to attempt to inform himself, through contact with Boeing Company qualification engineers, of possible prospective needs of the Boeing Company for aerospace fasteners and to pass this information on to appellant's out-of-state offices, describing the specifications required by the Boeing Company. After receiving this information from Martinson, Standard Pressed Steel would make the critical decision of whether or not to attempt to "qualify" as a supplier either to Boeing or Boeing subcontractors. If appellant should decide to attempt to qualify as a supplier, the company would manufacture sample qualification pieces and forward these to Boeing for qualification tests. Martinson was not in any way involved in this process. If the fasteners met the required specifications, Standard Pressed Steel Co. would be-

come an "approved source" and negotiations possibly leading to a sale would occur between the Boeing Company and appellant's out-of-state offices. Competing aerospace fastener companies would also attempt to qualify as an approved source and would also negotiate with Boeing on possible sales.

The record shows that all dealings in connection with the sale and negotiations concerning sales between Boeing and Standard Pressed Steel were carried on directly between Boeing and appellant's out-of-state offices. Martinson was not consulted during these negotiations but rather was by-passed completely. Martinson had absolutely nothing to do with quoting prices, delivery dates, receiving, soliciting or accepting orders, handling shipments, approving credit, or servicing the sale in any way. No inventories were kept in Washington, and all deliveries were made by appellant directly through a common carrier. If a problem would develop relative to the sale or some aspect of the sale, Boeing did not call on Martinson, but rather had to communicate with appellant's out-of-state offices directly.

The above described duties of Martinson consumed most of Martinson's time with the remainder (approximately 15%) of his time being devoted to "troubleshooting". If Boeing experienced any problems in the use of the product, Martinson's duties were to relay this information to appellant's out-of-state offices, and there the engineers would work to resolve the difficulty with the product. The engineers would then forward their solution to Martinson, who would in turn present the proposed solution to Boeing engineers.

In addition to the above, approximately every six weeks or so, Martinson would arrange hospitality meetings, lasting no more than three days, where appellant's engineers from its out-of-state offices and Boeing engineers would meet and discuss engineering problems in the use of the product. Martinson also would on occasion inform appellant of the identity of various subcontractors, purchasing specialists, and control buyers of commodities for which Standard Pressed Steel was an approved source. Martinson had no contact with such purchasing personnel, however.

HOW THE FEDERAL QUESTIONS WERE RAISED IN PROCEEDINGS BELOW

Throughout the course of the administrative hearings before both the Department of Revenue and the Board of Tax Appeals, the federal questions sought to be reviewed were raised in the initial petition and in the appeal to the Board of Tax Appeals, in the Findings of Fact and Conclusions of Law entered therein, and in the final determination and order, and they were fully argued and briefed in said proceedings.

The federal questions sought to be reviewed were raised in the Superior Court by the petition for review, that court's memorandum opinion and Findings of Fact and Conclusions of Law entered by the Superior Court, and were fully argued and briefed for that court. That court held that the assessment of the tax on appellant did not violate either the commerce clause or the due process clause of the United States Constitution.

The Superior Court entered judgment accordingly, and appellant appealed to the Washington Supreme Court,

who sent the case down to Division II of the Washington Court of Appeals. On appeal, the Court of Appeals sustained the assessment of the tax over appellant's claim that as applied, the statutes involved were invalid as repugnant to the United States Constitution on both interstate commerce and due process grounds. The federal questions were raised in the Court of Appeals by assignments of error in appellant's brief and were fully argued and briefed by both sides. The decision of the Court of Appeals (Appendix B) shows that the federal questions were raised and decided as the basis for its judgment, and that the validity of the pertinent tax statutes as applied to appellant were drawn in question and sustained against a claim of repugnancy to the United States Constitution.

Federal questions were additionally raised in appellant's petition for review addressed to the state Supreme Court and were briefed by the appellee in its answer to appellant's petition for review.

This case, therefore, meets the prerequisites for appeal jurisdiction as defined in *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282. *General Motors Corp. v. Washington*, 377 U.S. 436; *Field Enterprises, Inc. v. State of Washington*, 353 U.S. 806; *Gwin, White & Prince, Inc. v. Henneford*, 305 U.S. 434, were appeals from the Washington State Appellate Courts involving the same tax as challenged here. This court accordingly has jurisdiction on appeal pursuant to 62 Stat. 929, 28 U.S.C. §1257(2).

THE QUESTIONS ARE SUBSTANTIAL AS A MATTER OF CONSTITUTIONAL LAW

First Question

It is well established that local taxation of a foreign corporation engaged in interstate commerce is justified only where the corporation is engaged in *substantial* income-producing activity in the taxing state. *Northwestern States Portland Cement Co. v. Minn.*, 358 U.S. 450; *Miller Bros. Co. v. Maryland*, 347 U.S. 340; *General Motors Corp. v. Washington*, 377 U.S. 436; and *Norton Co. v. Dept. of Revenue*, 340 U.S. 534.

The decision of the Washington Court of Appeals, if left to stand, establishes a new rule of law, to wit: any activity at all by a foreign corporation within the taxing state, regardless of the type, amount and effect of such activity, where a customer is located within the taxing state, constitutes a sufficient nexus with the state to justify the imposition of a tax on the privilege of making those sales. This is wholly new law, directly conflicting with many holdings of the court, *e.g.*, the *Miller Bros. Co. v. Maryland*, 347 U.S. 340, where this court struck down the imposition of a sales tax even though there were occasional deliveries of purchases into the taxing state, and mailings of notices of special sales to residents of the taxing state; *American Oil Co. v. Neill*, 380 U.S. 451, where this court held that it was constitutionally impermissible to suppose that appellant's in-state activities as a coporation licensed to do business, contributed in any way to the transaction in question where every material phase of the sales transaction occured outside of the state; *Norton Co. v. Department of Revenue*, 340 U.S. 534, where the court stated

that while a concern cannot hold the immunities of an interstate business when it channels business through a local outlet, a concern does not lose its right to do interstate business with tax immunity, per se, by engaging in business within the state.

If this new rule of law is to stand, it should be declared by no less an authority than the United States Supreme Court. No other state has sought to impose a tax on the privilege of conducting business within a state, where the in-state activities are so thin and inconsequential as those performed by appellant's engineer. It is clear that the appellant has not, within the meaning of *Norton*, established, through its one engineer, a local outlet through which appellant gains the advantages of a local business. Appellant rather has approached the market in a manner in which the Washington customer views appellant as remote and distant, with the customer having to deal with a foreign corporation located in distant states.

The court below nevertheless determined that appellant's in-state activity was decisive in establishing and maintaining a Washington market. The conflict with *Norton v. Department of Revenue*, 340 U.S. 534, 71 S. Ct. 377 (1950), is clear. In *Norton*, as to that class of sales held by this court to be exempt, the Norton Co. was performing services within the state in connection with those sales through its corps of resident engineers who did not take or accept orders, but who did consult with customers as to their possible needs, and who offered engineering advice and assistance in the use of the product. Similarly, appellant's only in-state activity in connection with the sales in question is through its engineer, who consults with Boe-

ing as to its possible needs for the product, and who offers some engineering assistance and advice on the use of the product. On the authority of *Norton Co. v. Department of Revenue, supra,* such activities are not decisive factors in the sales and are not a sufficient nexus to support the imposition of a gross receipts tax on the privilege of making such sales. When compared with the incidents of the sale which occur outside of the state, the activity on which the tax is based is *de minimis,* indeed. Appellant's sales are, therefore, exempt from the Washington tax.

Respondent argued below that while the Norton engineers may have serviced customers in all other classes of sales, they were not involved in the direct sales held to be exempt. A careful reading of the opinion shows respondent's contention to be without merit. As noted in *Norton,* the Norton engineers consulted with prospective customers as to their needs and offered technical and engineering advice on the Norton products. Picture these engineers in their office, available to consult with a customer. A customer, or prospective customer, contacts one of these engineers with an engineering problem, or wants to consult with an engineer concerning a Norton product. Contrary to respondent's interpretation of *Norton,* it is certainly not reasonable to assume that prior to consulting with a customer, or prospective customer, the engineer would inquire of the customer as to whether the customer was placing his order direct to Massachusetts and receiving shipment directly back, in which case, the engineer would decline to render services, or whether the customer expected the help of the Chicago retail outlet into a warehouse in this sale, and if so, to what extent. And what would the engineer do if the customer had not yet decided how the order would

be placed? And, further, such an inquiry would only be relevant after the *Norton* decision in any event, unless we are to assume further that the Norton Co. and its engineers were able to predict the outcome of the *Norton* decision. In addition, there is nothing in the *Norton* opinion which states or implies that these engineers were not offering engineering assistance to customers involved in direct sales. On the contrary, the *Norton* opinion describes the engineers as providing engineering services to customers without limitation. If, in fact, the Norton Co. engineers did not provide engineering assistance to a certain class of customers, such a critical fact would certainly have been mentioned by the court in its opinion.

In the present case, where the material activities in connection with the sales occurred outside of the taxing state, the state is attempting to impose a tax on activities which occur beyond its borders, and which results in the state exacting a tax without the taxpayer receiving material benefits from the state in return. This is a violation of due process. *Norton Co. v. Department of Revenue, supra, Wisconsin v. J.C. Penney Co.*, 311 U.S. 435.

Second Question

The decision below held that the imposition of the tax did not violate the commerce clause. Without repeating much of the discussion above concerning the *Norton* case, which also applies here, once again the conflict with *Norton Co. v. Department of Revenue, supra,* is clear. In that case, the court held that sales such as exist in the present case were so clearly interstate in character as to be exempt from the Illinois privilege tax. Like the Norton Co., on its exempt sales, appellant has not established a local outlet

through whom business is channelled, and appellant has received no substantial benefits from the taxing state, for which the state can ask for something in return. To assess the privilege tax on appellant's gross sales to Washington customers is a clear violation of the commerce clause and is in conflict with the holding of this court in *Norton Co. v. Department of Revenue, supra.*

In this case, the material incidents of the transaction occur in either Pennsylvania or California, and the taxing situs of the privilege of conducting the transactions is in Pennsylvania or California. While these states do not have such a privilege tax at the present time, the *risk* of repeated exaction of the tax is clear. To rule that the question of multiple taxation is not properly before this court would subject the appellant to the vagaries and whims of various state legislatures. Appellant submits it is this very type of multiple exposure which the commerce clause was designed to prevent.

THE QUESTIONS ARE SUBSTANTIAL AS A MATTER OF PUBLIC IMPORTANCE

While the amount involved in this appeal is only $33,444.91, the impact of this case is far-reaching. Counsel for the appellant have received numerous inquiries from various in-state and foreign companies doing business with Washington customers, all expressing concern over the Department of Revenue's attempted expansion of the state's taxing power. In every prior instance where the taxing power of a state, including Washington, has been upheld on appeal, far more significant in-state activity in connection with the transaction has been present than exists here. Prior to this decision, it was assumed by the Department

of Revenue and the taxpayer and other businesses similarly situated, the mere presence of a local agent who was not materially involved in the sales transaction and who did not service the sale as such, was not a sufficient nexus to support the tax, and there were not sufficient benefits accorded to such business to justify the assessment. If the decision below stands, the various states, including Washington, can be expected to expand their power to every foreign business having a resident agent within the state, regardless of the amount, effect or nature of the agent's activities. The result to the states, including Washington, will be windfall revenue, which the legislature did not anticipate when they prepared the state's budget.

CONCLUSION

The questions presented were not settled by this court's decision in *General Motors Corp. v. Washington*, 377 U.S. 436. General Motors, through its maze of corporate activity within the State of Washington, some of which, if conceded, subjected it to the state Business & Occupation Tax, can in no way be compared with appellant's one engineer, who does not promote sales and is not involved in any way in the sales transaction. In *General Motors Corp. v. Washington*, this court considered the activities of one of the largest corporations in the world, with the corporation conducting a multitude of state activities. During the tax period involved in the case, the Chevrolet, Oldsmobile and Pontiac divisions had an average of 20 employees resident or principally employed in Washington. General Motors Parts Division employed about 20 more. The activities performed by these employees were substantial and involved *extensive* promotional and service efforts. General Motors

Parts Division further maintained a warehouse of parts and accessories in Seattle, and goods were shipped from Seattle to Washington dealers. The Seattle warehouse employed from 20 to 28 people during the taxing period in question. The activities of General Motors in the State of Washington are in sharp contrast to appellant employing one lone liaison engineer, through whom no local business was channelled, who played no part in the sales transactions to Washington customers, and whose activities are the same as those of the corps of resident engineers of the Norton Co. There is no possible justification for comparing the tremendous organizational and volume of activity of the General Motors Corp. with the one lone engineer of Standard Pressed Steel who worked out of part of one room of his home.

The decision below is a wholly new approach to the existing constitutional law in this area and is a radical departure from precedent. This new approach looks only at the mere fact of entry into the state, regardless of the nature or extent of the entry and activity within the state, and ignores the clear holding of prior decisions of this court requiring that the in-state activity must be substantial and must materially promote sales.

The result of the decision below, if left to stand, is that a taxpayer who has not established a local outlet and does not have the advantages of a local outlet, nevertheless, has lost its immunity from taxation, and the state will be exacting tax without providing benefits in return. This introduces serious uncertainty in interstate business. Firms once considered exempt will now be considered fair game and will be in jeopardy. Such a weakening of the commerce

clause protections will result in interstate business receiving only negligible protection, if at all, under the commerce clause.

If the decision below is left to stand, *Norton Co. v. Department of Revenue, supra,* will be overruled without affirmatively stating the same. Activities previously held by this court to be insufficient to justify a Business & Occupation Tax will now be sufficient. Appellant respectfully submits the decision below extends the taxing power of the state to the detriment of the national market. The questions presented by this appeal are constitutionally substantial and of great public importance and should be decided by this court after full briefing on the merits and oral argument.

Respectfully submitted,

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Counsel for Appellant

APPENDIX A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

STANDARD PRESSED STEEL CO., *Appellant,* v. DEPARTMENT OF REVENUE, *Respondent.*	No. 44750

ORAL DECISION OF THE COURT

(June 16, 1972)

THE COURT: Well, this matter comes before the court upon the appeal of the Board of Tax Appeals involving solely a wholesale tax, or wholesale tax activity involving the B & O tax.

We obviously have a foreign corporation who deals primarily and for the purpose of the record solely with the Boeing Company. I do not intend to go into all of the evidence, but apparently it is not in dispute that the State imposes its position concerning the fact that Mr. Martinson's operation was necessary so that the Appellant, one, could become aware of its products which the Boeing Company might be able to use, two, obtain the engineering design for such products, three, secure the testing of sample products to qualify the products for sale to the Boeing Company, four, resolve problems in the use of the products after receipt and use by the Boeing Company, five, obtain and retain good will and working rapport with Boeing personnel, and six, secure and update lists of Boeing pur-

chasing specialists or control buyers and the commodities for which they were responsible for the use of the invoicing personnel at the Appellant's home office.

The question before the court, of course, is whether in general but specifically in relation to the six enumerated factual matters there is sufficient interstate activity under which the B & O tax should levy.

I do not believe that the court has to go into the argument here concerned as to the court's position in the determination of the facts along with the Conclusions of Law which must result therefrom. By that I mean the argument as to whether this court is bound by the Administrative Procedures Act, or whether in effect this court is free to take these facts and apply them to the law as the court sees fit.

Now, of course, we have discussed, and I will take them up singly, the United States Supreme Court decisions involving General Motors and also Norton. The court makes specific reference to General Motors Corporation versus State, which is found in 60 Wn. (2d), at page 862, and B. F. Goodrich Company versus State, in 38 Wn. (2d), page 663. The court has studied those two cases very carefully, not only in relation to their content but, of course, by reference to that of Norton. I do not find any inconsistency between these two cases.

The General Motors Corporation case is on two particular bases. One, the importance of having an office within the State, as, of course, Mr. Martinson had in the State of Washington. I don't think that is really an issue, as a result of that case, because that in itself, of course, cannot determine the question before the court at the present time as

a sole and determining factor. The General Motors case concludes and makes its decision primarily upon the basis of the multitude of activities which were carried on by General Motors in the State of Washington, and in effect held that because of the multitude of association that the taxpayer could not show sufficient disassociation.

There are some interesting statements made in this case, some of which are important and some of which are not as to this court, but I wish to quote from General Motors at Page 874:

> "It suffices to say that we are not persuaded that any case of the United States Supreme Court or of this court dictates the approach that presence or absence of a local office is the controlling factor."

This court would like to state in that relation, although as I have stated this pertains to an office, I think what the Supreme Court is saying in effect is that no one single aspect of activity can itself be determinative of doing business in this State.

The case goes on to say:

> "To allow tax immunity to those who direct business activities from a point just across the state line, regardless of the quantum and effect of local activity, would amount to a discrimination against those who have located offices within the state. And taxation of those who perform de minimus activities through a local office would be unreasonable and unjust.
>
> "Although location of an office within the state has been of assistance in characterizing the extent of operations and activities within a state, the mere physical presence of an office within the state has never been the sole criterion for validating a state's assessment of a tax. Conversely, absence of a local office does not render the conclusion automatic that

> sufficient nexus to validate a tax is lacking. The essential inquiry must be directed to the amount and effect of the activities involved and not the form."

To this court that is one of the keys as to this case. The essential inquiry must be directed to the amount and effect of the activities involved and not the form of the operations, and I don't think that the court means by that that we must show quantity. For lack of a better term the court would like to use the word "quality," as it reflects in the doing of business being subjected to B & O tax.

I would also like to state that on Page 875 in commenting upon the varied activities of General Motors the court stated:

> "Yet the activities undeniably have a very great effect in terms of increasing total retail sales in Washington, thereby increasing also wholesale sales."

Of course, in recalling the facts of that case you will recall that they felt they ought to go in and promote retail sales so that they could get more wholesale sales, and they are holding here that those activities, well, not directly but indirectly, since they were assisting in the wholesale sales, that they could not claim the immunity.

They go on:

> ". . . where extensive business activity occurs within a state, taxation can only be avoided upon a showing that the activities are disassociated from the sales in question. Therefore, it is incumbent upon General Motors to make a showing of disassociation or, at a minimum, some degree of disassociation in order to remove from taxation that portion of sales not attributable to that activity. 'Although the mechanical aspect of the wholesale sales of General Motors to retail dealers occur outside of the state, the substance of each transaction occurs in Washington where the

customer is located and where the demand for the manufactured product exists, in very large degree, as a result of General Motors promotional activities.'"

Now, let's look at Goodrich. I quote:

"It agreed that, where a corporation has gone into a state to do local business by state permission, and has set up an office which performs service helpful to its competition for local trade, it may be taxed like any other vendor for sales made in connection with that business. But this, the court held, does not prevent its being tax-free with respect to sales separate and distinct from its local business; though the burden is on the taxpayer to show this disassociation, where it it demonstrated, the sales involved are interstate commerce, and entitled to the same immunity from state taxation as if the corporation has never established an office within the borders of the state."

In reference now to Norton they stated:

"The majority held that, in the absence of a showing that the services rendered by the Chicago office were not decisive factors in establishing and holding the Illinois market . . .

"In the absence of a showing that the services rendered by the Chicago office were not decisive factors in establishing and holding the Illinois market."

They go on to say:

"For our purposes, the crucial sentence in the majority opinion, and the one which sets forth the test we must apply in deciding this case, is the following:

"'Although the concern does not, by engaging in business within the State, lose its right to do interstate business with tax immunity, it cannot channel business through a local outlet to gain the advantage of a local business and also hold the immunities of an interstate business.'"

I think that the evidence is such in this case, gentlemen, that any one of the factors of which I have enumerated as

factually being evidentiary in nature in itself would probably not meet the test. I do not likewise believe that the solicitor cases would be appropriate under this form of taxation, but I do believe that the court must look at all of the facts and the cumulative effect upon the doing of business and invoking participation in the sales between the Appellant and the State of Washington. If we look at it in that manner, the fact that there is by Mr. Martinson's activities an attempt to hold the market by his services, if we tackle the fact that contrary to solicitation that he must have only the one purpose and that is to provide sufficient facts to his employer to make a sale, we cannot under the law of these two cases, of which there is no conflict, say that the taxpayer has overcome the burden of showing the disassociation, which is the key to the question before the court. I certainly do not say and do not hold that they are a part of the sales organization, but as I understand these cases that isn't the question. The point is, has the taxpayer overcome the burden of disassociation to the extent that they are not conducting business within our borders.

This I do not feel can be held when we take the cumulative facts as to what his purpose in this State is. I do not think that General Motors is in conflict because of the very essential inquiry which they state must be directed to the amount and effect of the activities involved and not the form. I don't think it is important at all but that we have one man, when he controls all of the Boeing work, as distinguished from having thirty-five various offices throughout the State, because the amount and effect of those activities is every bit as violative as if we had a volume type of approach.

In conclusion I would like to state that I am not reaching the point of the Administrative Procedures Act because my conclusion is that there are sufficient facts before the court if I just took it at a de novo position, for the sake of argument, to have found that under the two cases of which have been presented and references thereto that there has been a failure of the taxpayer to prove that there is not interstate activity which would not subject the manufacturer to the B & O tax or concerning the wholesale sales. So under those cases, and the fact that I have interpreted them accordingly, taken with the facts on the record of which are admitted, I feel that the burden has not been met by the manufacturer, which only means that the court must sustain the decision of the Board.

CERTIFICATE

STATE OF WASHINGTON }
COUNTY OF THURSTON } ss.

I EUGENE E. BARKER, an Official Court Reporter of the State of Washington, do hereby certify that the foregoing transcript of the Oral Decision of the court, presented in the above-entitled and number Cause by the Honorable FRANK E. BAKER, Judge of the Superior Court of the State of Washington, in and for the County of Thurston, on the 16th day of June, 1972, was reported by me on said date, and reduced to typewriting under my direction.

I further certify that said transcript of the Oral Decision of the Court, as above transcribed, is a full, true and correct transcript of my machine shorthand notes of the aforementioned matter.

DATED AND SIGNED this ..... day of June, 1972.

Official Court Reporter

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STANDARD PRESSED STEEL COMPANY, *Appellant*, v. DEPARTMENT OF REVENUE, STATE OF WASHINGTON, *Respondent*.	No. 1022-II Division Two Filed Dec. 3, 1973

ARMSTRONG, J.—This is an appeal from a Superior Court judgment affirming the final decision of the Board of Tax Appeals upholding the imposition of this state's business and occupation tax upon plaintiff, Standard Pressed Steel Company. It was the contention of plaintiff that imposition of the tax was unconstitutional. We hold that levying of the tax was constitutionally permissible.

The hearings below before both the Board of Tax Appeals and the trial court were conducted on the basis of the deposition of H. Robert Martinson, an employee of plaintiff, various exhibits introduced in connection with the deposition, and the pleadings in the case. There was no "live testimony." For this reason, it is unnecessary for us to consider the five findings of fact assigned as error by the plaintiff, because we may approach review of the plaintiff's contentions as indicated by the Supreme Court in *Smith v. Skagit County*, 75 Wn.2d 715, 718, 453 P.2d 832 (1969), quoting with approval the following language from *Carlson v. Bellevue*, 73 Wn.2d 41, 48, 435 P.2d 957 (1968):

> The appeal, therefore, from the trial court's judgment brings before us, in the same form and content, the identical documents and records presented to the

> trial court. Under these circumstances, we are not bound by disputed findings of the trial court to the same extent and in the same manner as where the trial court's findings rest upon the oral testimony of witnesses. . . . We are entitled to make our own examination of the records thus presented and determine the merits of the contentions going to the issue of arbitrary, capricious, and unreasonable legislative action. (Citations omitted.)

In other words, this court on appeal stands in the same position as the trial court in looking at the facts of the case and should review the record de novo. *Anderson v. Island County*, 81 Wn.2d 312, 316, 501 P.2d 594 (1972).

Both *Anderson* and *Smith* were zoning cases and the standard of judicial review was whether there had been arbitrary, capricious, and unreasonable legislative action. In this case, the scope of judicial review is pursuant to the Administrative Procedures Act and limited by the provisions of RCW 34.04.130(6).[1] Our review here is to determine from the facts whether the Board of Tax Appeals' decision sustaining imposition of the business and occupation tax was in violation of constitutional provisions.

The record discloses that plaintiff, Standard Pressed Steel Company, is a foreign corporation with production facilities located in Jenkintown, Pennsylvania and Santa

1. RCW 34.04.130(6) provides: "(6) The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse the decision if the substantial rights of of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(a) in violation of constitutional provisions; or
(b) in excess of the statutory authority or jurisdiction of the agency; or
(c) made upon unlawful procedure; or
(d) affected by other error of law; or
(e) clearly erroneous in view of the entire record as submitted and the public policy contained in the the act of the legislature authorizing the decision or order; or
(f) arbitrary or capricious."

Ana, California. A significant amount of plaintiff's business involves the manufacture and sale of fasteners (nuts and bolts, generally) to be used in the aerospace industry, and plaintiff's principal customer in this state during the tax years in question was the Boeing Company in Seattle.

The only employee of Standard Pressed Steel present within the State of Washington over the tax years in question was H. Robert Martinson, a "sales engineer." Martinson performed his activities for Standard Pressed Steel out of a portion of a room in his home equipped with a desk, telephone, and a file cabinet.

Martinson's primary function was to work with Boeing's engineers in the initial phases of aerospace design and construction, and through contact with Boeing engineers inform himself of possible prospective needs of the Boeing Company, and its various subcontractors, for aerospace fasteners. He would then initiate a product engineering request describing in detail the specifications required by Boeing and send this information on to plaintiff's out-of-state offices. After receiving this information from Martinson, plaintiff would make a decision as to whether or not Standard Pressed Steel would attempt to "qualify" as a Boeing supplier of a particular fastener; that is, Boeing determined who could be a supplier of component parts by qualification tests done at their Seattle facilities. If plaintiff would manufacture sample qualification pieces and forward these to Boeing for qualification tests. If the fasteners met the required specifications, Standard Pressed Steel would become an "approved source" and the Boeing Company would then enter into negotiations with plaintiff's out-of-state offices for purchase of the fasteners.

The record reflects that all such dealings and negotiations between Boeing and Standard Pressed Steel were carried on directly between Boeing and plaintiff's out-of-state offices. Martinson was bypassed completely, except to the extent that he periodically informed plaintiff of the various subcontractors, purchasing specialists, and control buyers of commodities for which Standard Pressed Steel was an approved source. Martinson had nothing to do with quoting prices, delivery dates, receiving, soliciting, accepting orders, handling shipments, or approving credit. No inventories were kept in this state, and all deliveries were made by plaintiff directly through a common carrier.

The above qualification process consumed approximately 80 to 90 percent of Martinson's time, with the remainder devoted to "troubleshooting." If Boeing experienced any problems in their use of the fasteners supplied by the plaintiff, Martinson's duties were to relay this information to plaintiff's engineers at the out-of-state offices, and there the engineers would work to resolve any difficulties with the product in their laboratories. The engineers would then forward their solution to Martinson, who would present the proposed solution to Boeing's engineers in Seattle. In addition, approximately three days every six weeks Martinson would set up meetings between Boeing engineers and visiting groups of plaintiff's engineers to visit and discuss engineering problems.

Based on the above activity within the State of Washington, the state contends that Standard Pressed Steel Company is subject to the business and occupation tax measured by gross receipts from plaintiff's sales to the Boeing Company.

In assessing the constitutionality of imposing the business and occupation tax in this case, we may start with the undisputed proposition that a state may not tax the privilege of engaging in interstate commerce, but may impose a tax that is incident upon an activity that is peculiarly local and distinct from interstate commerce. *General Motors Corp. v. Washington,* 377 U.S. 436, 12 L. Ed. 430, 438, 84 S. Ct. 1564 (1964); *Western Live Stock v. Bureau of Revenue,* 303 U.S. 250, 82 L. Ed. 823, 58 S. Ct. 546 (1938). In other words, a state *does* have the right to tax the privilege of doing *local* business, and if there is a taxable incident within the jurisdiction, the tax does not offend the commerce clause of the constitution as a tax on the privilege of doing interstate business. *Greyhound Lines, Inc. v. Tacoma,* 81 Wn.2d 525, 527, 503 P.2d 117 (1972); *Rena-Ware Distrib. Inc. v. State,* 77 Wn.2d 514, 519, 463 P.2d 622 (19710).

Here the record clearly discloses that Standard Pressed Steel Company employed Mr. Martinson as a resident agent within this state to conduct business activities with the Boeing Company, in part out of his Washington residence as an office, so that Standard Pressed Steel could: (1) become aware of which of its products the Boeing Company might be able to use; (2) secure the testing of sample products to qualify the products for sale to the Boeing Company; (3) obtain the engineering designs for such products; (4) resolve problems in the use of the products after receipt and use by the Boeing Company; (5) obtain and retain goodwill and working rapport with Boeing personnel; and (6) secure and update lists of Boeing purchasing specialists or control buyers, and the

commodities for which they are responsible, for the use of the personnel at the plaintiff's home office.

We are of the opinion that the foregoing substantial services constituted a sufficient peculiarly local and distinct taxable incident within the State of Washington such that imposition of the business and occupation tax was not on the privilege of engaging in interstate commerce, but rather on the privilege of doing local business.

Our inquiry does not end here, however, for even when there is a peculiarly local activity, the measure of the tax must be reasonably related to those local incidents. *General Motors Corp. v. Washington, supra.* A tax measured by gross receipts from sales by a foreign corporation to customers within the state must be closely related to the local activities of the corporation, for due process requires "some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax." *Miller Bros. v. Maryland,* 347 U.S. 340, 345, 98 L. Ed. 774, 74, S. Ct. 535 (1954).

It might be argued that since gross receipts from plaintiff's sales to the Boeing Company represent extensive manufacturing and operational activities in Pennsylvania and California, such gross receipts are not fairly related to the activities of Mr. Martinson. However, this contention was discussed in *Dravo Corp. v. Tacoma,* 80 Wn.2d 590, 599, 496 P.2d 504 (1972), as follows:

> The fact that the value which the gross receipts measure is, in large part, the result of activity *outside* the territorial limits of the taxing jurisdiction does not mean the gross receipts are not fairly related to the activity *within* the jurisdiction. There is no constitutional objection to resorting to extraterritorial

elements in determining the *measure* of a tax. *General Motors Corp. v. State*, 60 Wn.2d 862, 874, 376 P.2d 843 (1962), *aff'd.*, in *General Motors Corp. v. Washington, supra*; *Wisconsin v. J.C. Penney Co., supra*, at 445, *rehearing denied*, 312 U.S. 712, 85 L. Ed. 1143, 61 S. Ct. 444 (1941); *Great Atl. & Pac. Tea Co. v. Grosjean*, 301 U.S. 412, 425, 81 L. Ed. 1193, 57 S. Ct. 772, 112 A.L.R. 293 (1937).

Plaintiff relies on *Norton Co. v. Department of Revenue*, 340 U.S. 534, 95 L. Ed. 517, 71 S. Ct. 377 (1951), in support of the contention that Standard Pressed Steel's sales to the Boeing Company were not sufficiently related to Mr. Martinson's activities to justify the tax. In that case, the Norton Company was a Massachusetts corporation that manufactured and sold abrasive machines. It sought a refund for taxes paid under the provisions of Illinois' occupation tax. The Norton Company had no salesmen within Illinois, but it did maintain an office and warehouse in Chicago where it kept a substantial inventory. The company also had a group of engineers available to supply engineering and technical advice.

The United States Supreme Court upheld the tax where the measure of the tax attributed to the Chicago branch income from all sales that utilized it either in receiving orders or distributing goods. The court noted that the taxpayer had not established that such services as were rendered by the Chicago office were not decisive factors in holding that market. On the other hand, the court held that proceeds from orders sent directly to Massachusetts by the customer and shipped directly to the customer from Massachusetts were not reasonably attributable to the local business, and therefore not subject to the Illinois tax. *Norton Co. v. Department of Revenue, supra.*

From this holding plaintiff argues that since the presence of consulting engineers in Illinois was not enough to justify the tax on the interstate items in *Norton,* the activities of Mr. Martinson should not sustain the tax on sales made directly between Boeing and plaintiff's out-of-state offices in this case.

However, plaintiff overlooks the fact that implicit in the *Norton* decision was the conclusion that the activities of the local Chicago office, including the activities of the engineers, were not decisive factors in holding or establishing the market reflected by the direct, interstate sales. For example, the Norton decision was construed by our State Supreme Court as follows: "We only interpret the *Norton Co.* case as holding that such a tax may not be levied upon the proceeds from sales with which the local outlet had nothing to do." *B.F. Goodrich Co. v. State,* 38 Wn.2d 663, 675, 231 P.2d 325 (1951).

We are satisfied that the local activities of Mr. Martinson were instrumental in establishing and maintaining the Boeing Company as a market for the sales giving rise to the proceeds by which the state seeks to measure this tax. We therefore conclude that because the gross receipts from plaintiff's sales to the Boeing Company were reasonably related to the local incidents of the tax, imposition of the business and occupation tax here was not offensive to due process.

Plaintiff contends that the state's imposition of the business and occupation tax creates a multiple burden of taxation on plaintiff's interstate commerce. It is of course true that in judging the state's power to levy a tax measured by activities connected with interstate commerce, the follow-

ing determinations represent guidelines presently employed:

> (1) Whether the tax places an extra burden on interstate commerce not borne by intrastate commerce, or erects barriers, placing out-of-state businesses at a disadvantage when competing locally; *the discrimination test.*
>
> (2) Whether the interstate commerce involved is subject to the risk of repeated exactions of the same nature from other states; *the multiple burden test.*

McKinnis Travel Service v. State, 78 Wn.2d 229, 232, 472 P.2d 392 (1970); *Public Utility Dist. No. 2 of Grant County v. State,* 82 Wn.2d 232, 237, 510 P.2d 206 (1973).

In this case no argument has been advanced that discrimination against interstate commerce exists; nor could it be so argued, since this tax applies to all "businesses" in the State of Washington whether they engage in interstate commerce, intrastate commerce, or both. *McKinnis Travel Service v. State, supra.* As to the contention that the tax creates a multiple burden, we note that the United States Supreme Court, as well as the Supreme Court of this state, has held that the burden is upon the taxpayer to affirmatively show that its activities are subject to taxation elsewhere. *General Motors Corp. v. Washington, supra; Washington-Oregon Shippers Cooperative Ass'n. v. Schumacher,* 59 Wn.2d 159, 367 P.2d 112 (1961). In this case we find no such affirmative showing other than the unsupported assertion in plaintiff's appellate brief that a multiple burden has been created.

For the foregoing reasons, we find no constitutional infirmities derived from either the due process or commerce clauses to preclude the state from levying a tax upon the

local activities of Standard Pressed Steel Company. Further, it was constitutionally permissible to measure that tax by the value of gross receipts from sales to the Boeing Company's facilities in this state. We therefore sustain the imposition of the business and occupation tax in this case.

Affirmed.

s/ ARMSTRONG, J.

WE CONCUR:

s/ PEARSON, C. J.

s/ PETRIE, J.

APPENDIX C

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STANDARD PRESSED STEEL COMPANY, *Appellant.* v. DEPARTMENT OF REVENUE, STATE OF WASHINGTON, *Respondent.*	No. 1022-II ORDER DENYING PETITION FOR REHEARING OR MODIFICATION

The court has considered this petition for rehearing or modification and has determined that it should be denied. Accordingly, it is

ORDERED that the petition is denied.

DATED this 3rd day of January, 1974.

/s/ VERNON R. PEARSON

Chief Judge

APPENDIX D

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STANDARD PRESSED STEEL COMPANY, *Petitioner,* v. THE DEPARTMENT OF REVENUE, *Respondent.*	No. 43099 (1022-II) ORDER DENYING PETITION FOR REVIEW

The Court having considered the petition for review of the decision of the Court of Appeals in this cause together with the answer thereto, it is

ORDERED that the petition be and it is hereby denied.
DATED this 20th day of February, 1974.

By the Court:

/s/ FRANK HALE
Chief Justice

APPENDIX E

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STANDARD PRESSED STEEL COMPANY, *Appellant,* v. THE DEPARTMENT OF REVENUE, *Respondent.*	REMITTITUR No. 1022-II Thurston County No. 44750

The State of Washington to: The Superior Court of the State of Washington in and for Thurston County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on December 3, 1973, became the final judgment of this court in the above entitled case on February 20, 1974. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule 55 on Appeal, costs are taxed as follows: Six hundred twenty two dollars and 76/100 ($622.76) in favor of respondent and against appellant and against appellant's surety not to exceed the limit of the surety bond.

Petition for Rehearing denied January 3, 1974.

Petition for Review denied February 20, 1974.

CC TO:
Kenneth L. Cornell
Slade Gorton
Clerk of Supreme Court
Reporter of Decisions

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Tacoma, this 21st day of February, A. D. 1974

[SEAL]

/s/ LAURENCE P. GILL

Clerk of the Court of Appeals, State of Washington, Division II.

APPENDIX F

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STANDARD PRESSED STEEL CO., a foreign corporation, *Appellant*, v. DEPARTMENT OF REVENUE, *Appellee*.	No. 1022-II NOTICE OF APPEAL

TO: Department of Revenue, State of Washington, Appellee

AND TO: Slade Gorton, Attorney General, and William D. Dexter, Assistant Attorney General, attorneys for appellee

AND TO: The Clerk of the Above Entitled Court

YOU AND EACH OF YOU are hereby notified that appellant Standard Pressed Steel Co., a foreign corporation, being aggrieved by reason of the opinion of the Court of Appeals of the State of Washington, Division II, filed on December 3, 1973, which became a final judgment on February 20, 1974, does hereby appeal to the Supreme Court of the United States from that certain opinion made, rendered and entered in this court and cause on the 3rd day of December, 1973 and which became final judgment of this court in the above entitled case on February 20, 1974, and from each and every part of said opinion and judgment adverse to the appellant. On the basis that the Business &

Occupation Tax statutes of R.C.W. 82.04 are repugnant to the United States Constitution as applied to appellant and as construed by the court, appellant takes this appeal pursuant to 28 U.S.C. §1257(2).

DATED this 12th day of March, 1974.

/s/ HAROLD S. FARDAL
Of Attorneys for Appellant

NOTICE OF APPEAL

STATE OF WASHINGTON } ss
County of King }

The undersigned, being first duly sworn, on oath states: That on this day affiant deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the attorneys of record of appellee, containing a copy of the document to which this affidavit is attached.

/s/ HIROKO YOSHIDA

Subscribed and Sworn to before me this 12th day of March, 1974.

/s/ KENNETH L. CORNELL
Notary Public in and for the State of Washington
Residing in King County

APPENDIX G

82.04.040 "Sale," "casual or isolated sale." "Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a "sale at retail" or "retail sale" under RCW 82.04.050. It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

"Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved.

82.04.060 "Sale at wholesale," "wholesale sale." "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property which is not a sale at retail and means any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property, if such charge is expressly defined as a rental sale by RCW 82.04.050 when rendered to or for consumers: *Provided,* That the term "real or personal property" as used in this section shall not include any natural products named in RCW 82.04.100.

82.04.070 "Gross proceeds of sales." "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property and/or for services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, dis-

count paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

82.04.220 Business and occupation tax imposed. There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds or sales, or gross income of the business, as the case may be.

82.04.270 Tax on wholesalers, distributors

(1) Upon every person except persons taxable under subsections (1) or (9) of RCW 82.04.260 engaging within this state in the business of making sales at wholesale: as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of forty-four one-hundredth is one percent.

(2) The tax imposed by this section is levied and shall be collected from every person engaged in the business of distributing in this state articles of tangible personal property, owned by them from their own warehouse or other central location in this state to two or more of their own retail stores or outlets, where no change of title or ownership occurs, the intent hereof being to impose a tax equal to the wholesaler's tax upon persons performing functions essentially comparable to those of a wholesaler, but not actually making sales: *Provided,* That the tax designated in this section may not be assessed twice to the same person for the same article. The amount of the tax as to such persons shall be computed by multiplying forty-four one-hundredths of one percent of the value of the article

so distributed as of the time of such distribution: *Provided,* That persons engaged in the activities described in this subsection shall not be liable for the tax imposed if by proper invoice it can be shown that they have purchased such property from a wholesaler who has paid a business and occupation tax to the state upon the same articles. This proviso shall not apply to purchases from manufacturers as defined in RCW 82.04.110. The department of revenue shall prescribe uniform and equitable rules for the purpose of ascertaining such value, which value shall correspond as nearly as possible to the gross proceeds from sales at wholesale in this state of similar articles of like quality and character, and in similar quantities by other taxpayers: *Provided further,* That delivery trucks or vans will not under the purposes of this section be considered to be retail stores or outlets.

82.04.500 Tax part of operating overhead. It is not the intention of this chapter that the taxes herein levied upon persons engaging in business be construed as taxes upon the purchasers or customers, but that such taxes shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes shall constitute a part of the operating overhead of such persons.

APPENDIX H

REGULATION OF COMMERCE 1 §8, cl. 3

Section 8, Clause 3. Regulation of commerce

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

AMENDMENT XIV. — CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . .